

CHAPTER 6

RETENTION

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CHAPTER 6

RETENTION AND DESTRUCTION OF COURT RECORDS AND EXHIBITS

Introduction

A judge must establish a retention and destruction system to deal with a burgeoning collection of court records. Each judge is responsible for proper storage and retention of shorthand notes, stenographic notes and/or electronic tapes or disks containing recorded proceedings. Either photographs or the actual admitted exhibits must be retained. The court reporter has a unique role in that the job description may include the duties to aid the judge in the formulation of local storage space requirement standards, the formulation of standards for the re-utilization of electronic tapes, and the formulation of local court rules.

There are both standards and guides to assist the judges in determining which records to retain and the length of time that each must be retained. While IC 5-15-6 et seq., describing local public records commissions, offers standards for disposal of records, Admin. R. 7, Judicial Retention Schedules supersedes the county records commission regarding disposal of trial court records. Admin. R. 7 also states that “[Clerks of Circuit Court, Judges, and other court officers shall dispose of records in the manner set out in this rule and in accordance with the retention schedules specified herein”.

In order to better supervise the practices, procedures and systems for management, maintenance, and retention of trial court records, the Supreme Court created the Records Management Committee in 1983 and established the Information Management Section within the Division of State Court Administration in 1986.

Records Management Committee

The duty of the Records Management Committee is to conduct a continuous study of the systems of record keeping employed by the various courts of the state of Indiana. This study may include information management technology, such as micrographics, computerization, networking, desktop publishing, imaging, copiers, fax, video systems, etc. The committee will then make recommendations to the Supreme Court for improvements. See Admin. R. 4(B). The Records Management Committee also lists an address so that interested parties may make suggestions for improving records management systems employed by the judge. Questions and recommendations should be submitted in writing to the Division of State Court Administration, National City Center - South Tower, 115 West Washington Street, Suite 1080, Indianapolis, Indiana 46204-3417.

Purpose for Retaining Court Records

Court records, like other records, are written accounts of some act with the purpose of serving as a memorial and permanent evidence of the matter. Court records have two functions, the first being to keep evidence of past events.

The purpose and object of keeping records by a court of record, is to secure accurate memorial of all the proceedings in the case so that persons interested may ascertain the exact state thereof. State v. Davis, 226 Ind. 526, 82 N.E.2d 82, 85, (1948).

The clerk of the court has the duty to produce and preserve court records, but this is done under the supervision and control of the judge. See T. R. 77.

Court Records in Criminal Cases

Generally, in criminal cases, the court records should not be destroyed whenever any person has been convicted of a crime. This policy seems imbedded in various aspects of criminal procedure. For example, in Indiana the defendant may file a petition for post-conviction relief at any time after the conviction. See Chapter 2.

Of importance to a court reporter is Crim. R. 5, which supports the practice of maintaining detailed records in criminal cases. Crim. R. 5 and Admin. R. 7 provide the length of time that the record of a criminal trial must be kept. The possibility that post-conviction relief is shut off only by the death of the defendant requires that records of criminal convictions be maintained for a substantial period of time. In fact, schedules require retention of the record of a criminal felony trial for fifty-five (55) years after final disposition of the case; the Chronological Case Summary and the Record of Judgments and Orders (see T. R. 77) entries are retained as permanent records. In misdemeanor cases, record of a criminal trial must be kept for a period of ten (10) years. See Chapter 2.

Crim. R. 10 deals with the retention of records created during guilty plea and sentencing hearings. Crim. R. 11 deals with the retention of records of sentencing hearings and revocation of probation hearings in felony cases. The record of a guilty plea hearing and a sentencing hearing in cases involving murder or any felony must be retained for a period of 55 years. The record of a guilty plea hearing in cases involving misdemeanors must be retained for a period of ten (10) years. See P.C.R. 1(4) & (9) and Chapter 2.

Civil Cases

Crim. R. 5 and Crim. R. 10 have no civil rule counterparts. Assuming a timely filed Notice of Appeal, an appeal in a civil case ends when the judge receives a certified copy of an appellate opinion. See App. R. 15(B).

What Happens if a Court Record has been Destroyed?

Generally, the criminal defendant has an obligation to attempt to reconstruct the record. See App. R. 7.2(A)(3)(c). The court reporter may be required to prepare an affidavit that the record of the trial or of the guilty plea has been destroyed. See Chapter 2. The defendant may obtain additional information by contacting the clerk of the court and making arrangements for the preparation of a Chronological Case Summary (CCS) and copies of documents from the file. The judge's probation department and the county or state office of the public defender may possess additional information. See Curry v. State, 650 N.E.2d 317 (Ind. Ct. App. 1995).

Retention of Depositions - Civil and Criminal Cases

Deposition(s) that were offered into evidence as exhibit(s) are the responsibility of the court reporter, and they should be treated like all other exhibit(s). Deposition(s) not offered into evidence are the responsibility of the clerk of the court. The retention of depositions is governed by Admin. R. 7.

Retention of Material Objects

The evidence sub-committee of the Records Management Committee is working to set policies and standards for maintenance and disposal of material objects.

Policies and procedures for disposal of three-dimensional objects must be adopted by a proper local court rule. Any local court rule should require a judge to issue a specific order for the maintenance or disposition of all evidence. The local court rule should provide that after an appeal is concluded, the judge issues a disposition order requiring that material evidence objects may be returned to the owner or to the appropriate law enforcement agency for disposition or safe-keeping. See IC 35-33-5-5(d).

The court reporter retains physical possession and custody of the evidence admitted at trial if it is not part of the Record on Appeal. See App. R. 7.2(A)(3)(b). The reporter retains non-documentary and oversized exhibits and pictures of them may be included in the Exhibits Volume. See Chapter 5 and App. R. 29 (B)

Disposal of material, three-dimensional objects causes concern because of bulk and the potential for causing physical harm, and because of the necessity to protect the individual rights of the offender and the rights of society.

The following types of evidence exist:

1. Evidence that may be lawfully possessed

Disposition

- a. return to lawful owner, if known;
- b. if it is of little value or has spoiled (i. e., food), then the evidence is ordered destroyed;
- c. if of value and lawful owner is not found after a reasonable effort is made to ascertain the owner's whereabouts, such evidence is ordered to be turned over to the sheriff for sale at a public auction with proceeds going to the county's general fund.

2. Evidence which is contraband

Disposition

- a. contraband evidence, such as a controlled substance quantity, is ordered destroyed, after being photographed and documented.

3. Evidence in the form of deadly weapons

Disposition

- a. After the weapon has been photographed and documented, the Court may either order physical destruction of the weapon; or,
- b. order the weapon turned over to the sheriff for sale at a public auction with proceeds going to county's general fund.

4. Evidence containing biological materials

Two problems on disposition

- a. proper, safe handling of such evidence;
- b. maintenance of evidence for DNA and other analysis for extended periods of time.

Microfilming

Microfilming is recommended as a solution to the problem of preserving old or inactive record which are still of value. Admin. R. 7 allows the following records to be microfilmed:

1. Records whose retention requires microfilming;
2. Records which may be retained either in original form or on microfilm, as provided in the retention schedules; and
3. Records that must be retained permanently, as provided in the retention schedules.

Microfilming is not authorized without the written permission of the Division of State Court Administration because of the high cost involved.

Admin. R. 6 contain standards for the microfilming of court records.

Optical Disk Imaging (O.D.I.)

A digital image is an electronic data file consisting of digital data, which appears as the original document when reconstructed either on a display screen or on a hard copy print out. The Indiana Supreme Court has adopted standards that the judge must meet if a decision is made to employ digital imaging technology (D.I.T.). See Admin. R. 13(B) & (E). A document reconstructed by utilization of digital imaging technology may constitute an official record. See Admin. R. 13(E).

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